



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

April 20, 1962

Honorable John C. White
Commissioner of Agriculture
Capitol Building
Austin 11, Texas

Opinion No. WW-1317

Re: Whether an appointment to an unclassified seasonal position disqualifies such appointee for later appointment to a classified position at a rate of pay not to exceed the mid-point, provided he has "markedly superior qualifications."

Dear Mr. White:

We are in receipt of your request for opinion on the above question.

In regard to employees in your Department we quote from your letter as follows:

"Several applicants having 'superior qualifications' have been employed in seasonal positions. Some of these, after several months of duty in such positions, have been appointed to classified positions at salaries above the minimum because they not only have 'superior qualifications' but have demonstrated superior performance as well. We have considered these individuals 'new employees' insofar as classified positions are concerned. In connection with our March payroll the Comptrollers' Office has questioned such appointments.

"We respectfully request your opinion on the following question:

"Does appointment to an unclassified seasonal position disqualify an applicant for later appointment to a classified position at a rate not to exceed the mid-point, provided he has 'markedly superior qualifications?'"

The Position Classification Act of 1961, codified as Article 6252-11 of Vernon's Civil Statutes states in part as follows:

"Sec. 2. All regular, full-time salaried employments within the departments and agencies of the State specified in Article III . . . of the biennial Appropriations Act shall conform with the Position Classification Plan hereinafter described and with the salary rates and provisions of the applicable Appropriations Act commencing with the effective date of this Act with the exceptions and deferments hereafter provided in this Section.

". . .

"Specifically excepted from the Position Classification Plan hereinafter described are . . . hourly employees, part-time, and temporary employees; . . ."
(Emphasis added)

The above language indicates to us that seasonal employees would not be considered regular or full-time salaried employees, but would be part time or temporary employees, and as such were specifically excepted from the provisions of the Position Classification Act of 1961.

Subdivision B of Section 13 of Article III of Senate Bill 1, Acts. 57th Leg., 1st C.S. 1961, Ch. 62, p. 203 states in part as follows at page 381:

"B. Hiring policies. (1) New Employees. New employees will be started at the minimum salary of the range to which the position is assigned; however, the department head is authorized to employ below the prescribed minimum during the periods of training not to exceed six (6) months.

"(2) Application of Mid-Point. If the applicant has qualifications markedly superior to the minimum desired requirements of the position, the department head may set the salary of the position at not more than the mid-point of the assigned salary range. Notification of this action will be made to the Classification Officer. Consideration may be given to past experience of the employee in other state departments or agencies in determining the salary level of employment." (Emphasis added)

Since seasonal or temporary employees are not subject to the Position Classification Act of 1961, it follows from the above language that such employees are to be considered "new employees," if appointed to a classified position, and, if they possess "markedly superior" qualifications, you may place their

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salary at not more than the mid-point of their respective salary ranges. The Comptroller of Public Accounts is authorized to issue warrants for their newly-designated salaries. Your question propounded to us is therefore answered negatively.

S U M M A R Y

Seasonal or temporary employees are not subject to the Position Classification Act of 1961, and therefore may be considered new employees if appointed to a classified position. Such employees may be placed at not more than the mid-point of their salary range if they possess markedly superior qualifications.

Yours very truly,

WILL WILSON
Attorney General of Texas



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APPROVED:

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